ABDUL SALAM v. LEE AH SONG AND ANOR.

[App. Civ. Juris. (Taylor, J.) July 20, 1951]

[F.M. — Civil Appeal No. 19 of 1951]

Appeal — Extension of time to file the record of an appeal to the Court of Appeal — Whether single judge has jurisdiction to grant such an extension — Courts Ordinance, 1948, s. 18.

A single Judge of the Court of Appeal has jurisdiction to extend the time for filing the record of an appeal.

Case referred to:—

(1) *Muthucumaru v. Alkaff* (1933) M.L.J. 27.

MOTION for extension of time to file the record of appeal.

F. G. Pooley for the appellant.

Lim Cheng Ean for the respondents.

Cur. Adv. Vult.

Taylor, J. : — This was a motion for extension of time to file the record of an appeal to the Court of Appeal.

The time for filing notice of appeal expired on 20th April and the notice was actually lodged in the registry at Alor Star on 19th April. The time for filing the record therefore expired on 10th May. Meantime the registry had stated, in a letter to the appellant's solicitors, that the appeal was entered on 24th April calculating the time from that erroneous date, the solicitors lodged the record on 14th May and it was afterwards returned to them on instructions from the Central Registry at Kuala Lumpur as having been lodged out of time, without leave. The appellant then applied for the necessary extension of time to file the record.

As the next session of the Court of Appeal is still some weeks ahead there could be no real inconvenience either to the respondents or to the Court and there was no opposition. On the merits, therefore, the motion should succeed.

The substantial question argued is whether a single Judge of the Court of Appeal has jurisdiction to grant such an extension. It was said that there is no authority on this point. It is clear that he cannot grant extension of time to give notice of appeal, *Muthucumaru v. Alkaff*[1] but that is an entirely different question. That decision turned largely on the distinction between what is and what is not a pending matter — a point which does not arise here — but the report strongly suggests that at that date a single judge had jurisdiction to deal with such an application as this.

The present powers are given by section 18 of the Courts Ordinance, 1948. At first sight this provision seems to distinguish between a direction and an order, but after comparing the English Rules and the former local Rules I am satisfied that in this section "direction" is used in a sense similar to "summons for directions", where the directions given are always embodied in a formal order; for the purpose in hand, therefore, I do not think that there is any distinction.

I therefore hold that a single Judge of the Court of Appeal (sitting as such, not in the High Court) has jurisdiction on a motion filed and intituled in a pending appeal to extend the time to lodge the record.

On the question of costs, there is no hard and fast rule. The principle is that where a party seeks an indulgence he must ordinarily be prepared to pay the costs in any event, but where a mistake originated in the Court it may be regarded as a peril of the litigation and the costs may be in the cause. I thought that this case fell under the latter principle.

Order accordingly.

S.K.T. KULANTHAYAN CHETTIAR v. KOH LIAK PHUANG.

[Orig. Civ. Juris. (Paul Storr, J.) July 22, 1951]

[Muar — Originating Motion No. 77 of 1950]

Civil Procedure Rules (Johore), O. 10 r. 4(i) — "To the best of my knowledge" — Interpretation of — No cause of action.

At the hearing of this Originating Motion, Mr. Sault, who appeared for the respondent, raised two preliminary points: (1) that the affidavit of Ramaswami Pillai ((2) in file) in support of the Motion did not of itself disclose a cause of action in that he only deposed "to the best of my knowledge" as to there being no demand from the occupation agent and not within his knowledge and therefore the affidavit did not comply with O. 10 r. 4(i), Civil Procedure Rules, Johore, as this was a final matter and not an interlocutory one, and (2) that the affidavit filed of M. Balasibramaniam Pillai ((12) in file) should not be read for two reasons (a) that it was not sworn in conformity with O. 10 r. 6(ii) which, as India did not now come within O. 10 r. 6(i), it should have been, and (b) that the jurat did not conform with O. 10 r. 12(i) and therefore O. 10 r. 13 applied.

Held, that the words "to the best of my knowledge" when referred to the acts of another person must mean "to the best of my knowledge, information and belief" and that what is deposed to is not within the knowledge of the deponent and therefore, without such statement as is contained in para. 6 of the affidavit of Ramaswami Pillai ((2) in the file), the Motion shows no cause of action and must be dismissed.